

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION
NO. 4:20-CV-81-D

BEREAN BAPTIST CHURCH;
RETURN AMERICA, INC.;
DR. RONNIE BAITY; and
PEOPLE'S BAPTIST CHURCH, INC.,

Plaintiffs,

v.

GOVERNOR ROY COOPER, in his
official capacity,

Defendant,

PLAINTIFFS' NOTICE OF
VOLUNTARY DISMISSAL
WITHOUT PREJUDICE AND
MOTION TO RETAIN
JURISDICTION

WHEREAS, Plaintiffs filed this action on May 14, 2020, raising their First Amendment free exercise of religion challenge to Defendant Cooper's COVID-19 Executive Orders 121 and 138 prohibiting all mass gatherings, including for religious worship, of 10 or more people indoors unless impossible to gather outdoors, while carving out broad exemptions from the gathering prohibition for many secular activities; and

WHEREAS, on May 16, 2020, this Court granted Plaintiffs' emergency motion for a temporary restraining order, enjoining Defendant, any of his agents, employees, and state or local law enforcement officers from taking any enforcement action against plaintiffs or any other worshipers pursuant to the assembly for religious worship provisions in EO 138; and

WHEREAS, on May 20, 2020, Defendant Governor Cooper issued his Executive Order 141 to become effective at 5:00 p.m. on May 22, 2020; and

WHEREAS, Executive Order 141, Section 4, exempts “[w]orship, religious, and spiritual gatherings, funerals, wedding ceremonies, and other activities constituting the exercise of First Amendment rights from all the requirements of this Executive Order and Executive Orders Nos. 121 and 131 notwithstanding any other provisions of this Executive Order or of Executive Orders Nos. 121 and 138” (*see*, Exhibit A); and

WHEREAS, Executive Order 141 settles for the moment Plaintiffs’ claims that Executive Order 138 violated their First Amendment right to the free exercise of religion; and

WHEREAS, the declared State of Emergency still exists; and

WHEREAS, health officials have expressed concerns about a resurgence of COVID-19 infections as the state begins to phase in its reopening plans; and

WHEREAS, N.C. Stat. §§ 166A-19.30(c) and 166A-19.31(b)(5), authorizes Defendant Governor Cooper during the State of Emergency to prohibit and restrict activities the control of which he deems necessary to maintain order and protect lives or property during a state of emergency; and

WHEREAS, the issues raised by Plaintiffs in their Verified Complaint could be repeated if Defendant Governor Cooper exercises his continuing State of Emergency authority by withdrawing the exemption he granted for religious worship in Executive Order 141, Section 4;

NOW THEREFORE, pursuant to Fed. R. Civ. P. 41(a)(1)(A)(i), Plaintiffs:

1. Voluntarily dismiss without prejudice all claims brought in their Verified Complaint for Declaratory Judgement and Injunctive Relief in the above-captioned case, and

2. Respectfully move this Court to retain jurisdiction during the current State of Emergency over the question of the constitutionality of an Executive Order that imposes more restrictive prohibitions on Plaintiffs' right to gather for religious worship than it does for similarly situated secular activities. A proposed Order Retaining Jurisdiction is filed herewith.

Date: May 26, 2020

Respectfully submitted,

BEREAN BAPTIST CHURCH
RETURN AMERICA, INC.
DR. RONNIE BAITY
PEOPLE'S BAPTIST CHURCH, INC.

By their attorneys,

s/ Deborah J. Dewart
Deborah J. Dewart
N.C. Bar No. 30602
620 E. Sabiston Drive
Swansboro, North Carolina 28584-9674
Telephone: (910) 326-4554
debcpa@earthlink.net

s/ David C. Gibbs, Jr.
David C. Gibbs, Jr.*
Seth J. Kraus*
Jonathan D. Gibbs*
GIBBS & ASSOCIATES LAW FIRM, LLC
6398 Thornberry Ct.
Mason, Ohio 45040
Telephone: (513) 234-5545

dgibbsjr@gibbs-lawfirm.com

skraus@gibbs-lawfirm.com

jgibbs@gibbs-lawfirm.com

**To appear pursuant to Local Rule 83.1*

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on this May 26, 2020, I electronically filed the foregoing Plaintiffs' Notice of Voluntary Dismissal Without Prejudice with the Clerk of Court using the CM/ECF system, which will send notification of such filing to the following:

Ryan Young Park
North Carolina Department of Justice
P.O. Box 629
114 W. Edenton Street
Raleigh, NC 27602.
rpark@ncdoj.gov

s/ Jonathan D. Gibbs

Jonathan D. Gibbs*